

Supreme Court of Florida

No. AOSC17-26

IN RE: THOMAS J. DANDAR V. MEDIATOR
QUALIFICATIONS BOARD

ADMINISTRATIVE ORDER

Thomas J. Dandar has submitted a “Notice of Review of Mediator Disciplinary Action,” pursuant to rule 10.880 of the Florida Rules for Certified and Court-Appointed Mediators (Mediator Rules),¹ seeking review of a decision issued by a hearing panel of the Mediator Qualifications Board (Board), denying his application for recertification as a circuit court mediator pending proof of his successful completion, within ninety days, of six hours of Continuing Mediator Education (CME) courses preapproved by the Dispute Resolution Center (DRC). As set forth in this order, I find that the hearing panel’s conclusion that Dandar failed to establish his good moral character, as required for mediator certification, is supported by competent, substantial evidence.

1. Although the Mediator Rules were amended effective January 1, 2017, see In re Amendments to Florida Rules for Certified and Court-Appointed Mediators, 202 So. 3d 795 (Fla. 2016), this review proceeding was conducted pursuant to the 2016 version of the rules.

Dandar originally applied for and was granted certification as a circuit court mediator in 1999; he has renewed his certification every two years since then. In February 2014, Dandar submitted his Application for Mediator Certification Renewal with the DRC. Because he disclosed on the application that he had previously been reprimanded, sanctioned, or otherwise investigated subject to a disciplinary procedure, the DRC referred the renewal application to the Qualifications Complaint Committee for review. Formal Charges were prepared, and Dandar appeared for a hearing before a hearing panel. Following the hearing, the hearing panel issued its “Final Panel Decision,” finding that Dandar failed to possess the candor and good moral character required for continuing certification as a circuit court mediator. The hearing panel ordered that any pending application(s) for mediator certification and/or renewal be denied pending proof of Dandar’s successful completion, within ninety days of the decision, of six hours of CME courses preapproved by the DRC.

The hearing panel found that, on May 20, 2008, Dandar entered a conditional guilty plea for consent judgment and discipline pursuant to a Florida Bar grievance complaint in case number SC07-783. As part of his consent judgment, Dandar admitted to violating Rule 4-1.5(f)(5), Rules Regulating the Florida Bar (Bar Rules) by failing to prepare a closing statement for signature by a client prior to collecting his attorney’s fees and costs from the settlement funds.

He consented to an admonishment for minor misconduct to be administered before the Grievance Committee, to complete Ethics School provided by The Florida Bar, and to pay costs.

On February 11, 2010, and January 31, 2012, Dandar submitted sworn renewal applications with the DRC wherein he failed to disclose the existence of his 2008 Florida Bar discipline. Specifically, the hearing panel found that Dandar answered “no” in response to the following question on both applications for renewal:

Have you been sanctioned for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group since submitting your original or most recent renewal application for mediator certification? If so, provide particulars.

The hearing panel found that Dandar’s “no” response to this question was false on both applications. The hearing panel decision notes that “[t]he Florida Bar Disciplinary Rules, of which the mediator/attorney is charged with knowledge, specifically include an [a]dmonishment in the definition as a sanction.” Further, the hearing panel noted that by 2014, the DRC had amended its renewal application to include, among other things, the following questions:

b. Have you ever been sanctioned by a breach of ethics or unprofessional conduct by any court, administration, bar association or other professional group?

* * *

d. At any time in your past, were you reprimanded, sanctioned or in any other way investigated subject to disciplinary procedures of any type in any jurisdiction?

Dandar answered “no” to question “b.” and yes to question “d.” The hearing panel found that Dandar’s answer of “no” to “b.” was also false.

Based on these findings, the hearing panel concluded:

9. The mediator was charged herein with the lack of good moral character as required for mediator certification by Rule 10.110 of the Florida Rules for Certified & Court-Appointed Mediators based upon his failure to disclose the Admonishment sanction imposed against him in 2008 by the Florida Bar on his sworn 2010 and 2012 renewal mediator applications.

10. The Panel unanimously concludes that the mediator’s failure to disclose his 2008 Admonishment sanction on his 2010 and 2012 sworn renewal applications evidences a lack of candor and good moral character.

11. As a Florida Bar attorney, the mediator knew or should have known that his 2008 Admonishment was deemed a sanction by the Florida Bar pursuant to the Florida Bar Disciplinary Rules. Further, having attended Ethics School as prescribed in his 2008 disciplinary proceeding, the mediator should have particularly known that his untrue statements on his 2010 and 2012 sworn mediator renewal applications constituted both a lack of candor and good moral character required of the Florida Supreme Court certified mediators.

After considering the evidence and testimony presented at the hearing, the hearing panel found that Dandar did not possess the good moral character required for mediator certification, and denied his application for recertification pending proof of his successful completion, within ninety days of the panel's decision, of six hours of CME courses preapproved by the DRC.

Dandar seeks review of the hearing panel's findings and decision to deny his application for recertification pending proof of his successful completion, within ninety days, of six hours of CME courses approved by the DRC. The Mediator Rules provide: "The chief justice or designee shall review the findings and conclusions of the panel using a competent substantial evidence standard, neither reweighing the evidence in the record nor substituting the reviewer's judgment for that of the panel." See Fla. R. Med. 10.880(c)(1); see also In re: Edwin L. Ford v. Mediator Qualifications Board, Fla. Admin. Order No. AOSC07-50 (Sept. 7, 2007).

As a preliminary matter, Dandar challenges the evidentiary standard applied by the hearing panel. The hearing panel found by a preponderance of the evidence that Dandar lacked good moral character for mediator recertification pursuant to Mediator Rule 10.110. Dandar argues that the hearing panel applied the wrong evidentiary standard and that, therefore, the Board did not meet its burden of proof

and the panel's decision must be overturned. Dandar contends that Mediator Rule 10.820(m) (Sanctions), requiring an alleged rule violation to be reviewed under the clear and convincing evidence standard, should have applied to his proceeding.

Mediator Rule 10.820(m) (Sanctions) provides that “[i]f, after a hearing, a majority of the panel finds that there is clear and convincing evidence to support a violation of the rules, the panel shall impose such sanctions included in rule 10.830 as it deems appropriate and report such action to the center.” However, because Dandar applied for recertification as a circuit court mediator, I find that the instant matter is in the posture of an application proceeding, rather than a discipline proceeding. See In re: Irwin R. Eisenstein v. Mediator Qualifications Board, Fla. Admin. Order No. AOSC17-21 (April 4, 2017). Accordingly, I find that the hearing panel appropriately applied Mediator Rule 10.820(n) (Denial of Application for Certification), which provides in pertinent part that “[i]f, after a hearing, a majority of the panel finds by the preponderance of the evidence that an applicant should not be certified as a mediator, the panel shall deny the application.”

Dandar also challenges the constitutionality of the DRC's renewal application. The application asked:

Have you ever been sanctioned by a breach of ethics or unprofessional conduct by any court, administration, bar association or other professional group?

Dandar contends this question is unconstitutionally vague as applied. He argues that the question was ambiguous because the DRC used the word “sanctioned” to discover whether he had ever been “disciplined.” Dandar contends that “sanctioned” and “disciplined” are not synonymous and that the DRC should have asked about “discipline” if that is what they sought to elicit from the question.

Dandar asserts that the only discipline relevant to his moral character is the denial of professional license application, suspension, or disbarment. I find that Dandar’s constitutional challenge is without merit. Although the Mediator Rules are silent on this issue, I find guidance in the Court’s case law pertaining to lawyer discipline. In the context of Bar discipline cases, the Court has held that a Bar Rule is not unconstitutionally vague if “a person of common intelligence could be expected to understand the conduct proscribed by the rule.” See The Florida Bar v. Ross, 732 So. 2d 1037, 1042 (Fla. 1998); see also The Florida Bar v. Rosenberg, 169 So. 3d 1155, 1161 (Fla. 2015) (holding that “the Rules of Professional Conduct have consistently been upheld against vagueness and due process challenges” and approved the recommendations of the referee); The Florida Bar v. Von Zamft, 814 So. 2d 385, 388 n.1 (Fla. 2002) (stating with respect to the respondent’s argument that Bar Rule 4-8.4(d) was unconstitutionally vague: “We reject this claim as being without merit.”) Here, the question on the renewal applications asked whether Dandar had been “sanctioned for a breach of ethics or

unprofessional conduct” since his most recent renewal application. This question is sufficient to give a person of common intelligence reasonable notice of the types of discipline or sanctions that must be reported to the DRC. Although Dandar is attempting to draw a distinction between a “sanction” and “discipline,” such a distinction is without merit in this context. Pursuant to the Bar Rules, an admonishment is a type of discipline that may be imposed for ethical misconduct. See R. Regulating Fla. Bar 3-5.1(a). I find that Dandar reasonably should have known this fact, and accordingly, should have reported his 2008 admonishment on his renewal applications.

Dandar next challenges the hearing panel’s decision that he lacked good moral character. The Mediator Rules provide that an applicant for certification or recertification must establish his or her good moral character. Rule 10.110(a) states: “No person shall be certified by this Court as a mediator unless such person first produces satisfactory evidence of good moral character.” The applicant’s good moral character may be subject to inquiry “when the applicant’s or mediator’s conduct is relevant to the qualifications of a mediator.” Fla. R. Mediator 10.100(c)(1). The purpose of the good moral character requirement “is to ensure protection of the participants in mediation and the public, as well as to safeguard the justice system.” Fla. Med. R. 10.110(b).

In determining whether an applicant's conduct demonstrates a "present lack of good moral character," the hearing panel shall consider eleven factors: (1) the extent to which the conduct would interfere with a mediator's duties and responsibilities; (2) the area of mediation in which certification is sought; (3) the factors underlying the conduct; (4) the applicant's age at the time of the conduct; (5) the recency of the conduct; (6) the reliability of the information concerning the conduct; (7) the seriousness of the conduct as it relates to mediator qualifications; (8) the cumulative effect of the conduct; (9) any evidence of rehabilitation; (10) the applicant's candor; and (11) denial of an application for, or disbarment or suspension from, any profession. See Fla. R. Mediator 10.110(c)(4) (emphasis added).

Here, the primary evidence before the hearing panel was Dandar's 2008 admonishment by The Florida Bar and his 2010 and 2012 applications for renewal of his mediator certification. In his Florida Bar case, Dandar entered into a Conditional Guilty Plea for Consent Judgment. As part of his Consent Judgment, he admitted that he violated Bar Rule 4-1.5(f)(5) by failing to prepare a closing statement for signature by a client prior to collecting his attorney's fees and costs from the settlement funds. Dandar consented to an admonishment to be administered before the Grievance Committee of The Florida Bar and to complete The Florida Bar's Ethics School program. Thereafter, on his 2010, 2012, and 2014

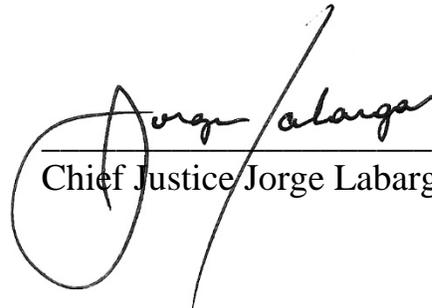
applications for renewal of his mediator certification, Dandar answered “no” to a question asking whether he had ever been “sanctioned for a breach of ethics or unprofessional conduct,” when he reasonably should have known that his admitted violation of the Bar Rules and resulting admonishment was a sanction that should have been disclosed on the application. Significantly, it is Dandar’s repeated failure to disclose the admonishment that the hearing panel found as evidence that he lacked good moral character necessary for recertification.

Considering the evidence presented, the hearing panel unanimously concluded that Dandar’s failure to disclose his 2008 admonishment on his 2010 and 2012 sworn renewal applications evidenced a lack of candor and good moral character. The hearing panel concluded that as a Florida Bar attorney, Dandar knew or should have known that his 2008 admonishment was deemed a sanction by The Florida Bar pursuant to the Florida Bar Disciplinary Rules. Further, the panel concluded that “having attended Ethics School as prescribed in his 2008 disciplinary proceeding, [Dandar] should have particularly known that his untrue statements on his 2010 and 2012 sworn mediator renewal applications constituted both a lack of candor and good moral character required of the Florida Supreme Court certified mediators.” I find that the hearing panel’s conclusion that Dandar lacks good moral character is supported by competent substantial evidence, and I approve the panel’s decision to deny his application for recertification pending his

successful completion, within ninety days of the hearing panel's decision, of six hours of CME courses preapproved by the DRC.

Dandar's "Motion to Tax Costs" and "Amended Motion to Tax Costs" are hereby denied. The Board's "Objection to and Motion to Strike Appellant's Motion to Tax Costs" is hereby denied.

DONE AND ORDERED at Tallahassee, Florida, on May 4, 2017.

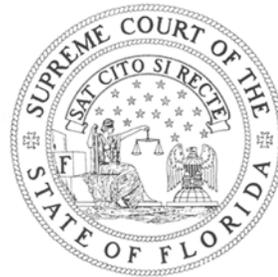


Chief Justice Jorge Labarga

ATTEST:



John A. Tomasino, Clerk of Court



Served:

Thomas J. Dandar
Susan Marvin
Avery S. Chapman